

STATE OF NEW YORK
COUNTY COURT

MONTGOMERY COUNTY

IN THE MATTER OF THE FORECLOSURE
OF TAX LIENS BY PROCEEDING IN REM
PURSUANT TO ARTICLE ELEVEN OF THE
REAL PROPERTY TAX LAW BY THE
COUNTY OF MONTGOMERY

ATTORNEY
AFFIRMATION

Index No. 2014942

MEGHAN M. MANION, an attorney admitted to practice in the State of New York, pursuant to Rule 2106 of the Civil Practice Law and Rule, affirms under penalty of perjury that the following is true:

1. I am the County Attorney for Montgomery County, NY.
2. I am familiar with the facts and circumstances of the above captioned action.
3. I make this affirmation in support of Montgomery County's motion for the Court to grant a temporary incidents of ownership of property currently assessed to 68 Church Street in the Village of Canajoharie, Montgomery County New York (Tax Map Parcel No. 63.14-1-9.1) currently assessed to TD Development, Inc., 1259 Buglers Sound Circle, Batavia OH 45103, but not canceling the Notice of Pendency with respect to this parcel.

BACKGROUND

4. The duly verified list of Delinquent Taxes dated November 17, 2014 for the County of Montgomery for the year 2014 was filed in the Office of the Montgomery County Clerk on November 18, 2014 (Index No: 2014942).

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MONTGOMERY COUNTY
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5. This list of delinquent taxes included 68 Church Street in the Village of Canajoharie, Montgomery County New York (Tax Map Parcel No. 63.14-1-9.1) currently assessed to TD Development, Inc., 1259 Buglers Sound Circle, Batavia OH 45103.
6. Montgomery County by Petition and Notice of Foreclosure dated October 20, 2015 and Tax Enforcement Notification dated November 6, 2015 commenced the above captioned proceeding pursuant to Article 11 of the Real Property Tax Law.
7. A copy of the Petition and Notice of Foreclosure and Tax Enforcement Notification were mailed by certified mail and ordinary first class mail to the assessed owner TD Development, Inc., 1259 Buglers Sound Circle, Batavia OH 45103. A copy of the Petition and Notice of Foreclosure and Tax Enforcement Notification are attached hereto as **Exhibit A**.
8. Thereafter a Notice of Foreclosure was advertised pursuant to New York State Real Property Tax Law Article 11 §1124.
9. The parcel which is the subject of this motion has not been redeemed.
10. Additionally no one has appeared on answered in the In Rem Foreclosure proceeding on behalf of the owner or any interested party, nor has the time to appear or answer been extended.

THE COURT SHOULD GRANT TEMPORARY INCIDENTS OF OWNERSHIP OF
68 CHURCH STREET TO MONTGOMERY COUNTY

11. That such parcel consisted of a prior factory and may have caused soil and groundwater contamination by petroleum products and/or other hazardous substances or polluting materials.
12. That pursuant to §56-0508 of the New York State Environmental Conservation Law, the temporary incidents of ownership are needed to conduct an environmental investigation in order to obtain detailed information about the environmental conditions there, including whether or not the soil and groundwater at the property are contaminated above applicable state and federal standards, before a judgment of foreclosure is entered.
13. Environmental Conservation Law §56-0508 (1) provides, in pertinent part, that after commencing a tax foreclosure proceeding a taxing authority may make a motion to the Court for an order granting such taxing authority “temporary incidents of ownership of such parcel for the sole purpose of entering the parcel and conducting an environmental restoration investigation project upon such parcel.” A copy of this provision is attached hereto as **Exhibit B**.
14. Environmental Conservation Law §56-0508 (2) states that unless the subject property has been redeemed prior to the return date of any motion for temporary incidents of ownership, an order shall be entered granting such temporary incidents of ownership enabling the taxing authority to enter the parcel and conduct an environmental investigation into the environmental conditions at the parcel.”

15. Environmental Conservation Law §56-0508 (2) further states such order shall stay the foreclosure proceeding until the environmental investigation has been completed and a final investigation report has been filed with the Court.
16. That pursuant Environmental Conservation Law §56-0508 (1) this relief shall act as a stay of the foreclosure action on such parcel until the environmental investigation is completed and the final report filed with the court.
17. That upon the filing of the final environmental report with the court the stay shall be lifted. Such report shall be filed with the court within thirty days of completion of such report.
18. No previous application for the relief herein has been made to any other Court or Judge.

WHEREFORE Montgomery County respectfully requests that the Court issue an Order:

- 1.) Granting Montgomery County temporary incidents of ownership of 68 Church Street, authorizing Montgomery County and any consultants working on its behalf to enter 68 Church Street to conduct an environmental investigation;
and
- 2.) Staying the foreclosure proceeding until the environmental investigation is complete and Montgomery County files a final investigation report with the Court.

Dated: March 4, 2016



MEGHAN M. MANION, ESQ.
COUNTY ATTORNEY
County Annex Building
P.O. Box 1500
20 Park St.
Fonda, New York 12068-1500
(518) 853-4304

TO:

TD Development, Inc.
1259 Buglers Sound Circle
Batavia, OH 45103

Exhibit A

STATE OF NEW YORK
COUNTY COURT, MONTGOMERY COUNTY

In the Matter of the Foreclosure of Tax
Liens by Proceeding In Rem pursuant to
Article Eleven of the Real Property Tax
Law by the County of Montgomery

PETITION AND
NOTICE OF
FORECLOSURE

Index No.

2014942

The Above-captioned proceeding is hereby commenced to enforce the payment of delinquent taxes or other lawful charges which have accumulated and become liens against certain property. The parcels to which this proceeding applies are identified on Schedule A (the date of the filing of the List of Delinquent Taxes) of this Petition, which is annexed hereto and made a part hereof. This document serves both as a Petition of Foreclosure and a Notice of Foreclosure for purposes of this proceeding.

Effect of filing: All Persons having or claiming to have an interest in the real property described in this petition are hereby notified that the filing of this petition constitutes the commencement by the Tax District of a proceeding in the court specified in the caption above to foreclose each of the tax liens therein described by a foreclosure proceeding in rem.

Nature of proceeding: This proceeding is brought against the real property only and is to foreclose the tax liens described in this petition. No personal judgment will be entered herein for such taxes or other legal charges or any part thereof.

Persons affected: This notice is directed to all persons owning or having or claiming to have an interest in the real property described in this petition. Such persons are hereby notified further that a duplicate of this petition has been filed in the office of the Enforcing Officer of the Tax District and will remain open for public inspection up to and including the date specified below as the last day for redemption.

Right of redemption: Any person having or claiming to have an interest in any such real property and the legal right thereto may on or before said date redeem the same by paying the amount of all such unpaid tax liens thereon, including all interest and penalties and other legal charges which are included in the lien against such real property, computed to and including the date of redemption. Such payment shall be made to Shawn Bowerman, Montgomery County Treasurer, County Annex Bldg. PO Box 1500, Fonda, New York 12068.

In the event that such taxes are paid by a person other than the record owner of such real property, the person so paying shall be entitled to have the tax liens affected thereby satisfied of record.

Last day for redemption: The last day for redemption is hereby fixed as the 19th day of February 2016

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MONTGOMERY COUNTY
CLERK'S OFFICE
FONDA, NEW YORK
15 OCT 20 PM 2:07

Service of answer: Every person having any right, title or interest in or lien upon any parcel of real property described in this petition may serve a duly verified answer upon the attorney for the Tax District setting forth in detail the nature and amount of his or her interest and any defense or objection to the foreclosure. Such answer must be filed in the Office of the County Clerk and served upon the attorney for the Tax District on or before the date above mentioned as the last day for redemption.

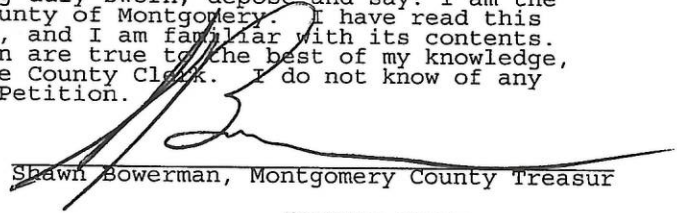
Failure to redeem or answer: In the event of failure to redeem or answer by any person having the right to redeem or answer, such person shall be forever barred and foreclosed of all his or her right, title and interest and equity of redemption in and to the parcel described in this petition and a judgment in foreclosure may be taken by default.

Dated: 10/20/15

Enforcing Officer
Shawn Bowerman
Montgomery County Treasurer

State of New York
County of Montgomery ss

I, Shawn Bowerman, being duly sworn, depose and say: I am the Enforcing Officer for the County of Montgomery. I have read this Petition which I have signed, and I am familiar with its contents. The contents of this Petition are true to the best of my knowledge, based upon the records of the County Clerk. I do not know of any errors or omissions in this Petition.

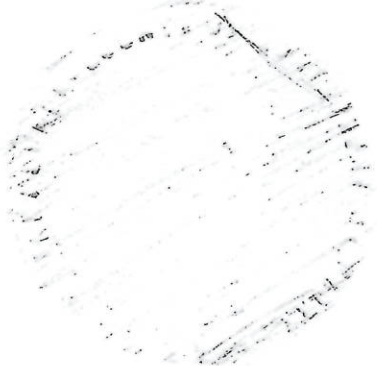

Shawn Bowerman, Montgomery County Treasurer

Sworn before me this 20th
day of October, 2015


Notary Public

JENNIFER L. CATUCCI
Notary Public State of New York
Qualified in Montgomery County
No. 01CA6280134
Commission Expires April 22, 2017

Attorney for Tax District: Meghan M. Manion
Montgomery County Attorney
20 Park Street
Fonda, New York 12068



STATE OF NEW YORK
COUNTY COURT, MONTGOMERY COUNTY

TAX ENFORCEMENT
NOTIFICATION

In the Matter of the Foreclosure of Tax
Liens by Proceeding In Rem pursuant to
Article Eleven of the Real Property Tax
Law by the County of Montgomery

INDEX NO 02014942

CERT# 2014 - 00137.00

2014-00137.00 272203 63.14-1-9.1
TD DEVELOPMENT INC
1259 BUGLERS SOUND CIRCLE
BATAVIA, OH
45103

TOWN: CANAJOHARIE
SWIS: 272203
SBL#: 63.14-1-9.1
PROP LOC: 68 Church St

To the party to whom the enclosed notice is addressed:

You are presumed to own or have a legal interest in one or more of the parcels or real property described on the enclosed petition of foreclosure.

As per Schedule A filed with the Montgomery County Court:

10/20/15	2014	LIST OF DELINQUENT TAXES	PETITION AND NOTICE OF FORECLOSURE	TOWN OF CANAJOHARIE	
BILL #	SWIS	SBL	CERT	NAME	LOCATION
107	272203	63.14-1-9.1	137.00	Beechnut Nutrition Corp	68 Church St
					FR FT-582.00 ACRES-24.50
				REPUTED OWNER	TD Development, Inc.

A proceeding to foreclose on such property based upon the failure to pay real property taxes has been commenced. Foreclosure will result in the loss of ownership of such property and all rights in that property.

To avoid loss of ownership or of any other rights in the property, all unpaid taxes, including current year, and other legal charges must be paid on or before the 19th day of February 2016, you must interpose a duly verified answer in the proceeding. ***Please note that in March of 2016, an auction preparation fee of 10% of the delinquent taxes due will be added when the tax payment is made.*** Postmarks WILL NOT be accepted as a payment date. Payment by CASH, MONEY ORDER or GUARANTEED FUNDS ONLY. We will accept CREDIT and DEBIT CARDS for an additional fee IN OUR OFFICE ONLY. You may make payment to Shawn J. Bowerman, Montgomery County Treasurer, County Annex Bldg., PO Box 1500, Fonda, New York 12068, in the amount of all such unpaid taxes and legal charges prior to that date.

After the 19th day of February 2016, a court will transfer the title of the property to the Montgomery County Treasurer by means of a court judgment.

Should you have any questions regarding this notice, please call the Montgomery County Treasurer's Office, at (518) 853-8175, or you may wish to contact an attorney.

****PAYMENT BY: CASH, MONEY ORDER OR GUARANTEED FUNDS ONLY****
****WE WILL ACCEPT CREDIT AND DEBIT CARDS FOR AN ADDITIONAL FEE IN OUR OFFICE ONLY****

*****COUNTY TREASURER OFFICE HOURS ARE 8:30 A.M. - 4:00 P.M.*****
*****EXCEPT - JULY & AUGUST HOURS ARE 9:00 A.M. - 4:00 P.M.*****

Dated:

11/06/15

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Environmental Conservation Law (Refs & Annos)
Chapter 43-B. Of the Consolidated Laws (Refs & Annos)
Article 56. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Refs & Annos)
Title 5. Environmental Restoration Projects (Refs & Annos)

McKinney's ECL § 56-0508

§ 56-0508. Foreclosure of a tax lien

Effective: April 13, 2015
Currentness

Notwithstanding any general, special or local law or ordinance to the contrary:

1. upon the commencement of a proceeding to foreclose a tax lien, the taxing district bringing the proceeding or any taxing district other than the one foreclosing the tax lien, having any right, title, or interest in, or lien upon, any parcel described in the petition of foreclosure may upon twenty days notice to all parties having any right, title, or interest in, or lien upon such parcel, move, at a special term in the court in which the foreclosure proceeding was brought, for an order granting such taxing district the temporary incidents of ownership of such parcel for the sole purpose of entering the parcel and conducting an environmental restoration investigation project upon such parcel.

2. unless prior to the return date of the motion brought pursuant to this section the parcel has been redeemed by a party having the right of redemption, the court shall enter an order granting such relief to such taxing district, or, if more than one taxing district applies for such right, to the taxing district which the court determines has the greatest public interest, but, where possible and proper, preferences for such relief should be accorded first to cities and villages, second to towns, and third to counties. Such order shall be granted upon such terms and conditions as the court shall deem just and proper to permit the environmental investigation to go on unhindered as well as to protect the interests of all other parties having a right, title, or interest in such parcel. Such order shall act as a stay to the foreclosure action on such parcel until the environmental restoration investigation project has been completed and the final investigation report filed with the court pursuant to subdivision four of this section or such other time as the court may deem proper, and particularly upon a finding by the court that the investigation has not been carried out in an expeditious manner.

3. such temporary incidents of ownership by such taxing district shall also qualify it as being the owner of such property to be eligible for funding from the state of New York for such environmental restoration investigation project under this article or for such funding from any source pursuant to any other state, federal, or local law, but such incidents of ownership shall not be sufficient to qualify it as the owner of such property for the purposes of holding it wholly or partially liable for any damages, past, present, or future from any release of any hazardous material, substance, or contaminant into the air, ground, or water, unless such release was caused by such taxing district.

4. within thirty days of the completion of the environmental restoration investigation project and the receipt by the taxing jurisdiction of the final report of such investigation, such taxing jurisdiction shall file such report with the court on notice to

the court and all other parties of record, and the stay of the foreclosure shall be lifted (unless lifted earlier by a prior court order), and all incidents of temporary ownership of the taxing jurisdiction that was awarded such taxing district, except any right for the environmental restoration investigation project to be funded, shall cease to exist, and nothing in this subdivision shall preclude the taxing jurisdiction that conducted the environmental restoration investigation project or the taxing jurisdiction that commenced the foreclosure action, if it is a different taxing jurisdiction than the taxing jurisdiction which conducted the investigation, from withdrawing the parcel from foreclosure pursuant to section eleven hundred thirty-eight of the real property tax law.

5. all costs associated with any environmental restoration investigation project conducted pursuant to the authority of this section shall be added to the taxes owed to, and the tax lien of, the taxing district that undertook the environmental restoration investigation project pursuant to this section.

Credits

(Added L.2003, c. 1, pt. D, § 7, eff. Oct. 7, 2003. Amended L.2015, c. 56, pt. BB, § 40, eff. April 13, 2015.)

McKinney's E. C. L. § 56-0508, NY ENVIR CONSER § 56-0508

Current through L.2016, chapter 1.

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